

BAY COUNTY ELECTION COMMISSION

MAY 11, 1987

THE BAY COUNTY ELECTION COMMISSION HELD A RECALL HEARING ON MONDAY, MAY 11, 1987. THIS MEETING WAS A CONTINUATION OF THE MEETING OF APRIL 28, 1987, FOR THE RECALL OF VIRGINIA HUTTER, CITY COMMISSIONER, 7TH WARD, BAY CITY. THE MEETING WAS CALLED TO ORDER AT 8:33 AM IN THE COMMISSION CHAMBERS OF THE BAY COUNTY BUILDING BY THE ACTING CHAIRMAN, BARBARA ALBERTSON.

PRESENT WERE: BARBARA ALBERTSON, CLERK  
EDWARD LEWANDOWSKI, TREASURER  
BARBARA DUFRESNE, REGISTER OF DEEDS

ALSO PRESENT: ANGELA MULDER, SECRETARY TO THE COUNTY CLERK  
KIM HIGGS, ASSISTANT PROSECUTING ATTORNEY  
MR. & MRS. GREEN, PETITIONERS  
VIRGINIA HUTTER, 7TH WARD CITY COMMISSIONER  
NEWS MEDIA

ALBERTSON: CALL THE BAY COUNTY ELECTION COMMISSION INTO SESSION. LET ME FIRST OF ALL EXPLAIN THE PRESENCE OF MRS. DUFRESNE UH, JUDGE DONER IS ON VACATION FOR THE NEXT THREE WEEKS, AND DUE TO A VACANCY WITHIN ONE OF US, WE ARE TO MAKE AN APPOINTMENT OF ANOTHER ELECTED OFFICIAL AND MRS. DUFRESNE HAS ACCEPTED THE APPOINTMENT FOR THIS MORNING. SO SHE WILL BE ACTING AS PART OF THE COMMISSION. I HAVE RECEIVED A PETITION OF RECALL NAMING VIRGINIA HUTTER FROM THE OFFICE OF 7TH WARD COMMISSION AND I RECEIVED THAT ON THE FIRST OF MAY, 1987. AND BEFORE WE CONTINUE I WOULD LIKE TO READ THE PETITION FOR THE NEWS MEDIA OR ANY INTERESTED PARTIES. THE PETITION STATES THAT :

"VIRGINIA HUTTER DIRECTLY OR INDIRECTLY INTERFERED WITH CONTRACT NEGOTIATIONS WITH THE FIREFIGHTERS UNION OF BAY CITY, BY DISCUSSING ISSUES WITH MEMBERS OF THE UNION, THAT WERE SPECIFIC ISSUES UNDER NEGOTIATION, IN CONTRAVENTION OF ARTICLE IV, SECTION 28 OF THE CITY CHARTER OF BAY CITY. WE ARE VERY DISTURBED WITH HER VOTING RECORD AS OUR REPRESENTATIVE. AFTER SHE WAS INFORMED THAT MANY OF HER CONSTITUENTS THAT THEY WERE OPPOSED TO A PAY RAISE FOR CITY MANAGER BARNES, SHE VOTED TO SUPPORT THE LARGEST PAY RAISE EVER GIVEN TO A CITY MANAGER IN BAY CITY. WE WISH TO HAVE VIRGINIA HUTTER RECALLED FROM THE OFFICE OF SEVENTH WARD CITY COMMISSIONER AND ASK THAT THIS PETITION BE APPROVED, AND THAT WE BE PROVIDED DUE PROCESS IN SEEKING A COMPETENT REPLACEMENT."

MAY I ASK IF THE PERSON WHO SUBMITTED THIS PETITION IS HERE, MR. GREEN? SHOW YOUR PRESENCE. AND VIRGINIA HUTTER, 7TH WARD COMMISSIONER, IS HERE, SHOW HER PRESENCE. ARE THERE ANY COMMENTS BY ANY PERSONS IN THE AUDIENCE BEFORE WE CONTINUE? MRS. HUTTER.

HUTTER: AGAIN, MS. ALBERTSON, THIS, AND THIS HAS BEEN DISCUSSED BY A FEW PEOPLE. THE WORD ISSUES, AND SPECIFIC ISSUES IS STILL A VERY BROAD STATEMENT. IT IS NOT GETTING TO THE FACTS, NOT GETTING TO THE EXACT ISSUES. WHAT ISSUES? THAT IS WHAT PEOPLE ARE ASKING. WHAT IS THE SPECIFIC ISSUES? THAT IS THE SAME THING AS SAYING INTERFERED. UH, I STILL SAY THAT ANYBODY CAN WALK OUT OF THIS UH, BUILDING TODAY WITH A RECALL PETITION, GO AROUND AND TALK TO PEOPLE IN THE 7TH WARD AND SAY WHATEVER THEY FEEL LIKE SAYING UH, IF THEY QUESTION WHAT ISSUES DID SHE INTERFERE WITH. I THINK THAT UH, THE SEVENTH WARD RESIDENTS HAVE THE RIGHT TO KNOW WHAT THE ISSUES ARE. I, I HAVE TALKED TO PEOPLE THAT FEEL THAT THEY DON'T UNDERSTAND WHAT ISSUES ARE THERE? AND I, AND I THINK THAT THE ISSUE, I THINK THIS BOARD SPELLED IT OUT THAT THEY SHOULD HAVE COME BACK WITH A RECALL ON SPECIFICS. WELL, THEY WROTE SPECIFICS DOWN BUT WHAT IS THE SPECIFICS, WHAT IS THE ISSUE? I THINK THAT THE, I THINK THE CITIZENS HAVE A RIGHT TO KNOW WHAT THE ISSUE IS THAT I VIOLATED.

ALBERTSON: WELL, AGAIN, YOU KNOW AND MR. GREEN KNOWS THAT THIS IS THE REASON THAT WE ARE MEETING. STRICTLY FOR THE CLARITY ON THIS. UM, THAT SHE DIRECTLY OR INDIRECTLY, WHETHER OR NOT, I GUESS I GOTTA EXPLAIN IT, THIS PART OF IT. OF WHETHER OR NOT ANY ACCUSATIONS HERE ARE TRUE OR FALSE IS DEFINITELY GOING TO BE UP TO THE PEOPLE WHO EITHER SIGN OR NOT SIGN A PETITION. THEY ARE THE ONES WHO ARE GOING TO HAVE TO DECIPHER WHETHER OR NOT IT IS TRUE OR FALSE ACCUSATIONS.

HUTTER: BUT, MS. ALBERTSON, HOW CAN ANYBODY SIGN A STATEMENT, A PETITION, WHEN THEY DON'T KNOW WHAT THEY ARE SIGNING? THEY DON'T KNOW WHAT THE STATEMENT IS.

GREEN: MS. ALBERTSON. EACH ALLEGATION DOES NOT NEED TO MEET THE REQUIREMENTS OF CLARITY. ONE OF THE ALLEGATIONS IS FOUND TO BE TRUE, THE WHOLE PETITION SHOULD CLEARED, SHOULD BE (INAUDIBLE). INCLUDING THOSE ALLEGATIONS WITH ME HAVE NOT BEEN DETERMINED OR TO BE UNCLEAR.

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ALBERTSON: WE HAVE OUR CIVIL COUNSEL WITH US THIS MORNING DUE TO THE FACT THAT JUDGE DONER ESPECIALLY IS NOT HERE, ANY LEGAL ASPECTS ARE GOING TO BE DIRECTED TO HIM ALSO THIS MORNING. MR. KIM HIGGS.

HIGGS: AS YOU ARE PROBABLY AWARE, WE SPENT A CONSIDERABLE AMOUNT OF TIME CONSIDERING THESE ISSUES WHEN THE RECALL PETITION WAS FILED AGAINST MAYOR SULLIVAN SO WE'VE HAD EXPERIENCE WITH THESE CLARITY QUESTIONS OF LATE. THE THING THAT PROBABLY WITHOUT A DOUBT CLEARER ALLEGATION IS THE MATTER REGARDING THE VOTE FOR THE PAY RAISE. THIS IS ALMOST THE SAME SORT OF SITUATION THAT WAS PRESENT IN THE CASE OF MAST VS. OAKLAND COUNTY ELECTION COMMISSIONERS A 1983 CASE THAT WAS DECIDED BY THE COURT OF APPEALS AT THAT TIME. AND UH, READING A CASE NOTE REGARDED ON THE PARTICULAR CASE STATES THAT "LANGUAGE OF A PETITION TO RECALL SENATOR ALLEGING THAT SENATOR FAILED TO FAITHFULLY REPRESENT PEOPLE BY VOTING BILL INCREASING STATE INCOME TAX OUT OF THE (INAUDIBLE) AND VOTING YES ON THE BILL WAS OF SUFFICIENT CLARITY TO ENABLE SENATOR AND ELECTORS TO IDENTIFY TRANSACTIONS WITH NO CHARGES TO BE MADE IN CONNECTION THEREWITH. IT WAS ON THE (INAUDIBLE) LEGISLATOR SINGLE VOTE ON THE FLOOR OF THE LEGISLATURE OR A COMMITTEE OR ANY SIMILAR SINGLE IDENTIFIABLE TRANSACTION MAY BE THE BASIS FOR A RECALL PETITION. ALL THAT IS REQUIRED IS THAT THE REASON FOR RECALL BE STATED WITH SUFFICIENT CLARITY TO A ENABLED OFFICERS AND ELECTORS TO IDENTIFY TRANSACTIONS AND CHARGES MADE IN CONNECTION THEREWITH." I THINK WE HAVE INSPECTED THAT PARTICULAR ISSUE, THERE IS SUFFICIENT CLARITY WITHOUT ADDRESSING THE SECOND ALLEGATION MADE. NOW THE ELECTIONS COMMISSION CANNOT EXCLUDE ANY OF THE ALLEGATIONS IF ONE IS FOUND TO BE SUFFICIENT, THEN THE WHOLE PETITION STANDS AS SAVING. COMMISSIONER HUTTER WILL NOT MAKE MODIFICATIONS OR EXCLUSIONS IT SIMPLY WOULD UH, APPROVE THE LANGUAGE AS STATED AS LONG AS ONE ALLEGATION IS OF SUFFICIENT CLARITY.

LEWANDOWSKI: UH, I HAVE A QUESTION. THIS LAST PART OF THE PETITION, CAN WE ASK THE MAKERS OF THE PETITION TO DELETE THAT PART? "WE WISH TO HAVE VIRGINIA HUTTER RECALLED FROM THE OFFICE .." BECAUSE THAT IS WHAT IT'S, THE PETITION IS ALL ABOUT. I DON'T THINK THAT'S NECESSARY BECAUSE THIS WORDING WILL BE PLACED ON THE BALLOT. DO WE HAVE TO VOTE AS IS, OR CAN WE CHANGE IT?

HIGGS: YOU UNDERSTAND WHAT THE QUESTION IS? THERE WAS A QUESTION ABOUT THE LAST SENTENCE. IT SEEMS LIKE THAT'S ADDRESSED TO THE COMMISSION, RATHER THAN TO UH,...

ALBERTSON: THE PORTION OF "WE WISH TO HAVE VIRGINIA HUTTER RECALLED FROM THE OFFICE OF 7TH WARD COMMISSIONER, AND ASK THAT THIS PETITION BE APPROVED" NOW, THIS IS WHAT WE ARE DOING HERE TODAY. EITHER APPROVING OR DISAPPROVING THE FACT OF HER BEING RECALLED IS STATED IN THE UPPER PART OF THE PETITION. OF "WE, THE UNDERSIGNED REGISTERED AND QUALIFIED VOTERS, AND RESIDENTS OF THE CITY OF BAY CITY, IN THE COUNTY OF BAY, AND STATE OF MICHIGAN, HEREBY PETITION FOR THE CALLING OF AN ELECTION TO RECALL, " AND WE'RE NAMING THAT PERSON, VIRGINIA HUTTER THERE, "FROM THE OFFICE OF SEVENTH WARD COMMISSIONER." AND IT'S MORE OF A REPEAT TO THE BOTTOM PART HERE WHERE YOU STATE WE WISH TO HAVE VIRGINIA HUTTER RECALLED.

GREEN: O.K. FINE.

ALBERTSON: "FROM THE OFFICE OF SEVENTH WARD COMMISSIONER AND ASK THAT THIS PETITION BE APPROVED AND THAT WE BE PROVIDED DUE PROCESS IN SEEKING A COMPETENT REPLACEMENT."

GREEN: YOU WOULD LIKE TO HAVE THAT REMOVED? YES. O.K. I'LL REMOVE IT.

ALBERTSON: IF WE DELETE THAT AND VOTE ON THAT PART, PORTION OF BEING DELETED AND REREAD IT SO THAT YOU UNDERSTAND IT, MRS. HUTTER UNDERSTANDS IT, THE PRESS UNDERSTANDS IT...

GREEN: YES.

ALBERTSON: AND THEN VOTE ON IT. MY FELLOW COMMISSIONERS IS THAT AGREEABLE?

LEWANDOWSKI: I AGREE.

DUFRESNE: YES.

ALBERTSON: MRS. HUTTER ?

HUTTER: HE HAS THE RIGHT TO DELETE ONE THING BUT NOT SOMETHING ELSE?

ALBERTSON: WE DON'T FEEL THAT "WE WISH TO HAVE VIRGINIA HUTTER RECALLED FROM THE OFFICE OF SEVENTH WARD COMMISSIONER" IS PART OF A REASON OF RECALL. "AND ASK THAT THIS PETITION BE APPROVED" WE DON'T FEEL AS THOUGH THAT IS A CAUSE FOR RECALL. "AND THAT WE BE PROVIDED DUE PROCESS IN SEEKING A COMPETENT REPLACEMENT" CAUSE THAT IS GOING TO BE UP TO THE PEOPLE ONCE THEY EITHER SIGN PETITIONS OR NOT SIGN PETITIONS, AND ONCE WE, THE PETITIONS IF ARE OBTAINED, AND FILED WITH THE CLERK, THEN WE PROCEED TO PREPARE A BALLOT AND PROCEED FOR A SPECIAL ELECTION OR WHATEVER.

ALBERTSON: BUT WE DO NOT FEEL AS THOUGH THAT THAT IS PART OF THE ACTUAL RECALL REASON.

HUTTER: BUT THE FIRST ACCUSATION IS UH...

ALBERTSON: "THAT SHE DIRECTLY OR INDIRECTLY INTERFERED WITH CONTRACT NEGOTIATIONS WITH FIREFIGHTERS UNION OF BAY CITY BY DISCUSSING ISSUES WITH MEMBERS OF THE UNION AND THAT WERE SPECIFIC ISSUES UNDER NEGOTIATION, AND CONTRAVENTION OF ARTICLE VI, SECTION 28 OF THE CITY CHARTER OF BAY CITY. WE ARE VERY DISTURBED WITH HER VOTING RECORD AS OUR REPRESENTATIVE." AND THAT WOULD BE ANOTHER...

HUTTER: YOU CAN REBUTTAL BUT, YOU KNOW YOU SAID THAT UH, THAT I WOULD HAVE THE RIGHT OF 250 WORDS.

ALBERTSON: UNDER 200...

GREEN: 200 WORDS OR LESS, MRS. HUTTER.

HUTTER: 250.

ALBERTSON: THAT IS ON THE BALLOT, MA'AM.

HUTTER: YES.

ALBERTSON: YES.

HUTTER: O.K. HOW CAN YOU REBUTTAL SOMETHING YOU DON'T KNOW WHAT THEY ARE ACCUSING YOU OF?

ALBERTSON: MR. HIGGS.

HIGGS: THERE IS SOME CASE LAW REGARDING THAT PARTICULAR ISSUE AND UH, IT BASICALLY HAS BEEN HELD THAT GENERAL DENIAL IS SUFFICIENT. IN OTHER WORDS, YOU CAN SIMPLY SAY THAT THESE ALLEGATIONS ARE UNTRUE AND THAT IS SUFFICIENT RESPONSE.

HUTTER: WHAT ALLEGATIONS? WHAT IF THEY GO OUT AND TELL PEOPLE (INAUDIBLE) THEY DO NOT KNOW WHAT IS GOING ON BESIDE (INAUDIBLE) UH, MR. HIGGS, WHAT UH, I DON'T KNOW WHAT THESE PEOPLE ARE GOING TO GO OUT, THEY HAVE OPENED THEIR DOORS SO WIDE THEY CAN SAY WHATEVER THEY FEEL LIKE. I WON'T KNOW WHAT I AM REBUTTING AGAINST.

HIGGS: I ASSUME THAT YOU ARE REFERRING TO "BY DISCUSSING ISSUES WITH MEMBERS OF THE UNION THAT WERE SPECIFIC ISSUES UNDER NEGOTIATION."

HUTTER: YES. THE WORD ISSUES AND SPECIFIC ISSUES IS THE SAME THING AS A BROAD STATEMENT OF INTERFERING. THEY CAN INSERT ANYTHING THEY WANT I WOULD HAVE NO WAY TO REBUTTAL WHAT THEY TELL THEM.

HIGGS: WELL, I GUESS THE UH, THE ISSUE THAT IS MOST CLEAR IS THE VOTE ISSUE.

HUTTER: THEN WHY WHY IS...

HIGGS: IS THE CLARITY...

HUTTER: I CAN REBUTTAL, I CAN REBUTTAL THE ISSUE OF THE PAY RAISE THAT BAY CITY TIMES PUBLICIZED SO WIDELY AND OTHERS BUT, AND I CAN ALSO I CAN ALSO REBUTTAL A POOR VOTING RECORD. I HAVE NO PROBLEMS WITH THOSE. I HAVE PROBLEMS WITH GOING OUT AND RECALLING PETITION AROUND THE 7TH WARD. THAT'S NOT MY...THE ISSUE HERE IS WHAT IS THE SPECIFICS. WHAT IS THE ACCUSATION AGAINST ME? HOW CAN I REBUTTAL SOMETHING I DON'T KNOW WHAT THEY'RE GOING TO GO OUT AND TELL. I KNOW THEY'RE GOING TO TELL ABOUT THE PAY RAISE BECAUSE IT SAYS IT RIGHT IN HERE. I KNOW THEY'RE GOING TO TELL ABOUT THE POOR VOTING RECORD BECAUSE THEY HAVE STATED IT. BUT, I CANNOT, I DO NOT KNOW WHAT THEY ARE GOING TO STATE AT DOORS.

HIGGS: WELL, THERE'S; THERE IS NO WAY YOU ARE EVER GOING TO HAVE CONTROL OVER WHAT IS SAID AT DOORS. WHAT YOU DO HAVE A RIGHT TO RESPOND TO IS THE LANGUAGE IN THE PETITION. THAT IS THE ONLY THING THAT...

HUTTER: BUT THE LANGUAGE ISN'T CLEAR.

GREEN: ONLY ONE HAS TO BE. IF YOU DON'T UNDERSTAND THERE IS TWO PARTS OF IT. YOU CAN HAVE A NUMBER OF ALLEGATIONS. IT IS JUST, EACH ALLEGATION DOES NOT NEED TO MEET THE TEST OF CLARITY. AND THAT IS THE LAW AS FAR AS I KNOW AS I GOT TO...

ALBERTSON: MR. GREEN, WHAT LAW ARE YOU CITING?

GREEN: UH, I JUST, I TALKED TO A COUPLE OF ATTORNEYS AND I WENT TO A LAWYER, OR WENT TO THE LIBRARY TO LOOK UP A THE, LOOKED IT ALL UP AND I WROTE THAT EACH ALLEGATION DOES NOT NEED TO MEET THE TEST OF CLARITY. IF ONE OF THE ALLEGATIONS IS FOUND TO BE CLEAR, THE WHOLE PETITION IS RULED SUFFICIENT. THE ALLEGATIONS WHICH MAY HAVE NOT BEEN DETERMINED TO BE ON HERE. I PUT ALOT OF THIS, SPENT A LOT OF TIME IN THE LIBRARY FOR THIS.

ALBERTSON: ARE THERE ANY OTHER COMMENTS? MY FELLOW COMMISSIONERS HAVE YOU REVIEWED THE PETITION TO THE FACT THAT YOU FEEL AS THOUGH YOU ARE ABLE AND READY TO VOTE? AT THIS TIME I WOULD CALL FOR A MOTION.

LEWANDOWSKI: I'LL MAKE THAT MOTION.

ALBERTSON: MR. LEWANDOWSKI YOU MOVE THAT IT BE ACCEPTED WITH OR WITHOUT THE "WE WISH TO HAVE VIRGINIA HUTTER RECALLED FROM THE OFFICE OF 7TH WARD COMMISSIONER."

LEWANDOWSKI: WITHOUT.

ALBERTSON: WITH THE DELETION OF THAT?

LEWANDOWSKI: WITH THE DELETION.

ALBERTSON: I WILL ONCE AGAIN READ HOW WE WILL BE APPROVING THIS. " THAT SHE DIRECTLY OR INDIRECTLY INTERFERED WITH CONTRACT NEGOTIATIONS WITH THE FIREFIGHTERS UNION OF BAY CITY BY DISCUSSING ISSUES WITH MEMBERS OF THE UNION THAT WERE SPECIFIC ISSUES UNDER NEGOTIATION IN CONTRAVENTION OF ARTICLE VI, SECTION 28 OF THE CHARTER OF BAY CITY. WE ARE VERY DISTURBED WITH HER VOTING RECORD AS OUR REPRESENTATIVE, AFTER SHE WAS INFORMED THAT MANY OF HER CONSTITUENTS" IS THAT SUPPOSED TO BE BY OR THAT? " THAT SHE WAS INFORMED THAT MANY OF HER CONSTITUENTS"...

GREEN: YES.

ALBERTSON: "THAT THEY WERE OPPOSED TO A PAY RAISE FOR CITY MANAGER BARNES, SHE VOTED TO SUPPORT THE LARGEST PAY RAISE EVER GIVEN TO A CITY MANAGER IN BAY CITY." AND THAT WILL END IT AT THAT TIME.

GREEN: THAT'S IT.

ALBERTSON: THAT IS YOUR MOTION?

LEWANDOWSKI: YES.

DUFRESNE: SUPPORT.

ALBERTSON: SUPPORT? I WILL TAKE A ROLL CALL.

YEAS: DUFRESNE, LEWANDOWSKI, ALBERTSON

NAYS: NONE

THE PETITION WAS APPROVED AS READ.

LEWANDOWSKI: MOVE TO ADJOURN.

SUPPORTED BY DUFRESNE.

THE MEETING ADJOURNED AT 9:10 am.

BARBARA ALBERTSON, CLERK  
ELECTION COMMISSION

ANGELA MULDER  
SECRETARY TO COUNTY CLERK  
ELECTION COMMISSION